

# April 2003

## Update: Contempt of Court Benchbook (Revised Edition)

### CHAPTER 1

#### The Nature of the Contempt Power

##### 1.3 Courts Must Exercise Contempt Power With Restraint

Insert the following language at the end of Section 1.3, on page 2:

In *In re Smothers*, \_\_\_ F3d \_\_\_ (CA 6, 2003), the United States Court of Appeals indicated that courts should be aware of the options available to them in order to maintain respect and decorum in the court, especially when a criminal contempt order may be too strong of a punishment. In *Smothers*, an attorney appeared late for two consecutive court appearances. The attorney was held in criminal contempt. The United States Court of Appeals provided the following guidance:

“Logic dictates that courts use a form of progressive discipline in the face of such transgressions. First, a lecture from the court regarding the importance and significance of being on time for scheduled appearances is the mildest penalty. . . . If such a lecture is not successful in correcting the problem initially, as it was not here, a court can involve the offending attorney’s office management or partnership. An apology on the record and in front of the jury can also be required.

“Courts also have the option of recommending to the appropriate bar association that the attorney be subject to disciplinary action such as a public reprimand. Such a recommendation would encourage state bar associations to assert their natural role and allow the attorney to be reprimanded by peers without the powerful stigma of an order of criminal contempt.

“With the advent of the internet, a public reprimand directly by the court is also a viable option. . . . Disciplinary postings can be placed on a page associated with the court’s website. The appropriate public posting might list the attorney’s name, details of the misconduct, and the court’s disapproval.

“Finally, the imposition of a fine unaccompanied by a formal sanction could be used. District judges routinely impose monetary penalties for tardiness without resorting to a finding of criminal contempt. The amount of the penalty may be based upon the length of the delay or the cost to the court from such delay. Where a non-criminal monetary penalty is imposed, the district judges may direct the attorney to pay a fine to a charity of the attorney’s choice or to the clerk’s office to be used for expenses associated with the jury (e.g. coffee, donuts and newspapers), which necessarily increase when proceedings are delayed.” *Id.* at \_\_\_\_.